

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA

CHARLESTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 2:10-CV-01087

\$88,029.08, MORE OR LESS,  
IN UNITED STATES CURRENCY,

Defendant.

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 2:11-cv-00101

\$27,671.50, MORE OR LESS,  
IN UNITED STATES CURRENCY,

Defendant.

Katherine Anne Hoover and  
John F. Tomasic,

Interested Parties as to both cases.  
(No pending criminal charges)

In the Matter of the Seizure of  
Proceeds on Deposit in Account  
Nos. XXXXXX3002 and XXXXXX7905,  
Wesbanco Bank, Wheeling, WV,  
in the name of Katherine A. Hoover

Case No. 2:10-mj-29

In the Matter of the Search of  
the Bedroom used by Dr. Katherine Hoover  
located at 110 West Second Avenue,  
Williamson, Mingo County,  
West Virginia

Case No. 2:10-mj-35

O R D E R

Pending before the Court is a Motion to Consolidate filed by the Interested Parties in the above-styled cases on April 21, 2011. The United States has not filed a response.

The United States has moved to dismiss Case No. 2:11-cv-00101. That case concerns currency which was seized from an account ending in 3002 at Wesbanco, Wheeling, WV, in the amount of \$27,671.50, pursuant to the warrant issued in 2:10-mj-29. Judge Copenhaver denied the motion for return of that currency on December 16, 2010, and denied the motion to reconsider on April 12, 2011, ruling that the litigation over that currency is "more properly addressed in the pending civil forfeiture proceeding." The United States has now agreed to return the currency to the Interested Parties. The Interested Parties agree that the currency should be returned to them, but disagree that a Certificate of Reasonable Cause, sought by the United States, should be entered. The civil forfeiture proceeding has thus superseded the motion for return of property in 2:10-mj-29. It is inappropriate for the Interested Parties to file documents in 2:10-mj-29; they have the opportunity to litigate their positions regarding probable cause for the search and seizure warrant in 2:11-cv-00101.

Case No. 2:10-cv-01087 concerns \$85,127.08 seized from an account ending in 7905 at Wesbanco, Wheeling, WV, and \$2,902.00 seized from a bedroom allegedly used by Interested Party Katherine

Hoover at 110 West 2nd Avenue, Williamson, WV. The seizure from the Wesbanco account was pursuant to the warrant issued in 2:10-mj-29; the seizure from the bedroom was pursuant to the warrant issued in 2:10-mj-35. As noted above, Judge Copenhaver has ruled that the litigation over the currency seized pursuant to the warrant issued in 2:10-mj-29 shall be conducted in the pending forfeiture proceedings. In 2:10-mj-35, Judge Copenhaver denied the motion for return of that currency on December 16, 2010, and denied the motion to reconsider on April 12, 2011, ruling that the litigation over that currency is "more properly addressed in the pending civil forfeiture proceeding." The Interested Parties contend that the United States lacked probable cause to seize the currency which is the subject of 2:10-cv-01087. They have the opportunity to litigate their positions regarding probable cause for the search and seizure warrants in 2:10-cv-01087.

Rule 42(a), Federal Rules of Civil Procedure, provides as follows:

**(a) Consolidation.** If actions before the court involve a common question of law or fact, the court may:

- (1) join for hearing or trial any or all matters at issue in the actions;
- (2) consolidate the actions; or
- (3) issue any other orders to avoid unnecessary cost or delay.

The affidavit in support of the applications for search and seizure warrants in 2:10-mj-29 and -35 was the same. The currency seized pursuant to the warrant in 2:10-mj-29 is the subject in both 2:10-

cv-01087 and 2:11-cv-00101. The Interested Parties are raising the same claims and objections to the seizures of the currency in both civil forfeiture actions. Accordingly, the two civil forfeiture proceedings involve common questions of law and fact and they should be consolidated.

The two search and seizure warrant actions (Nos. 2:10-mj-29 and -35) are completed and a final Order has been entered in each. The Interested Parties should refrain from filing documents in those actions.

It is hereby **ORDERED** that the Motion to Consolidate is denied with respect to Case Nos. 2:10-mj-29 and -35, and granted as to Case Nos. 2:10-cv-01087 and 2:11-cv-00101. The lead case will be 2:10-cv-01087.

The Clerk is directed to transmit this Order to counsel of record and to provide a copy to the Interested Parties Hoover and Tomasic via fax transmission to 242-328-4014 or, alternatively, by Federal Express.

ENTER: June 24, 2011

  
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Mary E. Stanley  
United States Magistrate Judge